



Attorney's Docket No.: 12372-002001

THE UNITED STATES PATENT AND TRADEMARK OFFICE

Applicant : Aki Kiagawa

Art Unit : 1623

Serial No. : 09/834,103

Examiner : Patrick T. Lewis

Filed : April 12, 2001

Title : Sustained Drug Release Compositions

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Commissioner for Patents

NOV 10 2003

P.O. Box 1450

Alexandria, VA 22313-1450

TECH CENTER 1600/2900

PETITION TO WITHDRAW EXAMINER'S HOLDING OF ABANDONMENT

Under 37 CFR §§1.8(b) and 1.181, Applicants hereby petition to withdraw the Examiner's holding of Abandonment as set forth in the Notice of Abandonment mailed September 4, 2003 (copy enclosed) by the United States Patent and Trademark Office ("the Office"). The application was abandoned under 37 CFR §1.135 for failure to respond to a Final Office Action mailed January 8, 2003.

The undersigned, applicant's attorney of record, first became aware of the abandonment on September 4, 2003, upon receipt of the Notice of Abandonment and submits that this petition to withdraw the holding of abandonment is being promptly submitted as required by 37 CFR §1.8(b)(1).

The following documents are submitted under 37 CFR §1.8(b)(2) as proof that a Request for Continued Examination in response to the Final Office Action was timely filed on July 8, 2003:

1. A copy of the Request for Continued Examination, including an executed certificate of mailing signed by Cheryl Caron on July 8, 2003;

CERTIFICATE OF MAILING BY FIRST CLASS MAIL

I hereby certify under 37 CFR §1.8(a) that this correspondence is being deposited with the United States Postal Service as first class mail with sufficient postage on the date indicated below and is addressed to the Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450.

11-4-03  
Date of Deposit

Signature

Cheryl A. Caron  
Typed or Printed Name of Person Signing Certificate

2. A copy of the Petition for Extension of Time, including an executed certificate of mailing signed by Cheryl Caron on July 8, 2003, which extended the period for responding to the Final Office Action for 3 months, to and including July 8, 2003;

3. A copy of the postcard dated July 8, 2003 that was included with the response and Petition for Extension of Time. The postcard received an Office stamp date of July 11, 2003, which corresponds to the date of receipt of the RCE shown in the Patent Application Information Retrieval (PAIR) System; and

4. A copy of the Patent Application Information Retrieval (PAIR) System page for the above-identified application showing receipt by the Office on July 11, 2003.

5. A copy of the Reply to Office Action as filed with the RCE.

On September 12, 2003, Applicants sent Examiner Patrick Lewis (Art Unit 1623) *via* facsimile a copy of the aforementioned postcard, Reply to Office Action, and RCE. On September 17, 2003, Applicants conducted a brief telephone interview with Examiner Lewis at which time he confirmed receipt of the facsimile transmission of September 12, 2003 and that the RCE had been properly and timely filed. On September 26, 2003, Applicants conducted a second telephone interview with Examiner Lewis at which time he indicated that the RCE would be entered and that this action would serve to revive the case. He also indicated that once the case had been located, he would provide Applicants with an Interview Summary confirming that the case would be revived upon entry of the RCE. On October 29, 2003, Applicants conducted a third telephone interview with Examiner Lewis at which time he indicated that the Interview Summary had not been sent because the file had been lost. He also informed Applicants that no written statement regarding the status of the case could be issued until the case was found.

Absent written confirmation from the Office indicating that (1) the Notice of Abandonment was issued as a result of an error by the Office, (2) the RCE was timely and properly filed and would be entered, and (3) the case would be revived upon entry of the RCE, Applicants submit herewith this petition to request withdrawal of holding of abandonment on the grounds that the reply to Office Action, RCE, and Petition for Extension of Time were properly and timely filed. Applicants request consideration of this petition as it is being filed within two months of the mail date of the Notice of Abandonment in accordance with 37 C.F.R. 1.181(f) and MPEP § 711.03(c).

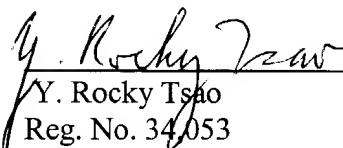
Applicant : INVENTOR NAME et al.  
Serial No. : 10/1  
Filed : October 11, 2002  
Page : 3 of 3

Attorney's Docket No.: 99999-AMM / client ref

Please apply any charges or credits to Deposit Account No. 06-1050, referencing  
Attorney Docket No.: 12372-002001.

Respectfully submitted,

Date: 11-3-03

  
Y. Rocky Tsao  
Reg. No. 34,053

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|                 |             |                      |                     |                  |
|-----------------|-------------|----------------------|---------------------|------------------|
| APPLICATION NO. | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
| 09/834,103      | 04/12/2001  | Aki Kitagawa         | 12372-002001        | 5320             |

26161 7590 09/04/2003

FISH & RICHARDSON PC  
225 FRANKLIN ST  
BOSTON, MA 02110

EXAMINER

LEWIS, PATRICK T

|          |              |
|----------|--------------|
| ART UNIT | PAPER NUMBER |
|----------|--------------|

1623

DATE MAILED: 09/04/2003

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Please find below and/or attached an Office communication concerning this application or proceeding.

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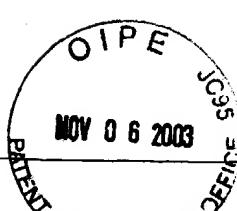
SEP 08 2003

FISH & RICHARDSON, P.C.  
BOSTON OFFICE

(RCE was filed 7/8/03)

|                              |
|------------------------------|
| Docketed By Practice Systems |
| Action Code: ABN-PTO F500    |
| Base Date: 9-4-03            |
| Due Date: 11-4-03            |
| Deadline: 11-4-03            |
| Initials: JMG                |

|                               |
|-------------------------------|
| Docketed By Billing Secretary |
| Due Date: _____               |
| Deadline: _____               |
| Initials: _____               |



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### Notice of Abandonment

Application No.

09/834,103

Applicant(s)

KITAGAWA ET AL

Examiner

Art Unit

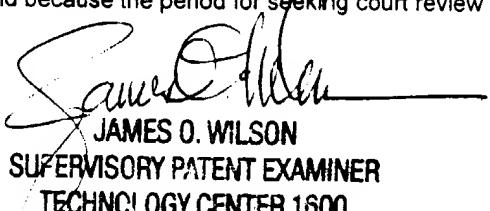
Patrick T. Lewis

1623

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address--

This application is abandoned in view of:

1.  Applicant's failure to timely file a proper reply to the Office letter mailed on 08 January 2003.
  - (a)  A reply was received on \_\_\_\_\_ (with a Certificate of Mailing or Transmission dated \_\_\_\_\_), which is after the expiration of the period for reply (including a total extension of time of \_\_\_\_\_ month(s)) which expired on \_\_\_\_\_.
  - (b)  A proposed reply was received on \_\_\_\_\_, but it does not constitute a proper reply under 37 CFR 1.113 (a) to the final rejection. (A proper reply under 37 CFR 1.113 to a final rejection consists only of: (1) a timely filed amendment which places the application in condition for allowance; (2) a timely filed Notice of Appeal (with appeal fee); or (3) a timely filed Request for Continued Examination (RCE) in compliance with 37 CFR 1.114).
  - (c)  A reply was received on \_\_\_\_\_ but it does not constitute a proper reply, or a bona fide attempt at a proper reply, to the non-final rejection. See 37 CFR 1.85(a) and 1.111. (See explanation in box 7 below).
  - (d)  No reply has been received.
2.  Applicant's failure to timely pay the required issue fee and publication fee, if applicable, within the statutory period of three months from the mailing date of the Notice of Allowance (PTOL-85).
  - (a)  The issue fee and publication fee, if applicable, was received on \_\_\_\_\_ (with a Certificate of Mailing or Transmission dated \_\_\_\_\_), which is after the expiration of the statutory period for payment of the issue fee (and publication fee) set in the Notice of Allowance (PTOL-85).
  - (b)  The submitted fee of \$\_\_\_\_\_ is insufficient. A balance of \$\_\_\_\_\_ is due.  
The issue fee required by 37 CFR 1.18 is \$\_\_\_\_\_. The publication fee, if required by 37 CFR 1.18(d), is \$\_\_\_\_\_.
  - (c)  The issue fee and publication fee, if applicable, has not been received.
3.  Applicant's failure to timely file corrected drawings as required by, and within the three-month period set in, the Notice of Allowability (PTO-37).
  - (a)  Proposed corrected drawings were received on \_\_\_\_\_ (with a Certificate of Mailing or Transmission dated \_\_\_\_\_), which is after the expiration of the period for reply.
  - (b)  No corrected drawings have been received.
4.  The letter of express abandonment which is signed by the attorney or agent of record, the assignee of the entire interest, or all of the applicants.
5.  The letter of express abandonment which is signed by an attorney or agent (acting in a representative capacity under 37 CFR 1.34(a)) upon the filing of a continuing application.
6.  The decision by the Board of Patent Appeals and Interference rendered on \_\_\_\_\_ and because the period for seeking court review of the decision has expired and there are no allowed claims.
7.  The reason(s) below:

  
JAMES O. WILSON  
SUPERVISORY PATENT EXAMINER  
TECHNOLOGY CENTER 1600

Petitions to revive under 37 CFR 1.137(a) or (b), or requests to withdraw the holding of abandonment under 37 CFR 1.181, should be promptly filed to minimize any negative effects on patent term.